



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,917	10/30/2003	Anthony R. Tuel	RSW920030189US1	9643
23550 7590 12/04/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER WU, QING YUAN	
			ART UNIT 2194	PAPER NUMBER
			NOTIFICATION DATE 12/04/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hwdpatents.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/697,917

Applicant(s)

TUEL, ANTHONY R.

Examiner

Qing-Yuan Wu

Art Unit

2194

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112 2nd paragraph rejection on claims 4 and 10.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: N/A.
Claim(s) objected to: N/A.
Claim(s) rejected: 1, 3-6, 9, 10, 12-15 and 17-25.
Claim(s) withdrawn from consideration: N/A.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 11. does NOT place the application in condition for allowance because: In the remarks, Applicant argued in substance that a) a computer system as recited inherently includes computer hardware therefore is not software alone. b) Applicant respectfully submits that the claimed feature "requesting, after the replying..." is not properly classified as a "design preference". c) Neither Somogyi nor AAPA teaches or suggests program code for starting a resource thread for a resource. Examiner respectfully traversed Applicant's remarks: As to point (a), the examiner respectfully disagrees and submits that the body of the claim failed to support the hardware requirement for the preamble. More specifically, the applicant is claiming a hardware/"computer system" that only recites software and software functionalities (i.e. modules, mechanism) alone. Therefore the argument is not persuasive. As to point (b), the examiner respectfully disagrees and submits that for the sake of argument even if applicant's claimed step is not design preference, Somogyi's and AAPA still satisfy the above limitation as claimed since applicant failed to preclude or define the term "replying" and what the reply contains (i.e. transaction result). For example, applicant's replying step can be interpreted as either "implicit" or "explicit", therefore the absence or lack of a reply in Somogyi alone or in combination with AAPA can indicate an implicit reply of successful resource preparation which satisfied the limitation. In addition, Somogyi disclosed the reporting results of XA operations which includes, result of a preparation, commitment and rollback [paragraphs 24 and 27; Fig. 5; claim 5, paragraph 39] which further support the examiner's reason for modifying Somogyi and AAPA. As to point (c), Somogyi's teaching of utilizing (i.e. by starting/initiating/assigning) an available thread for handling the resource transaction operation clearly satisfied this limitation [paragraphs 20-21].